

MARY ANN SMITH  
Deputy Commissioner  
SEAN M. ROONEY  
Assistant Chief Counsel  
JUDY L. HARTLEY (State Bar No. 110628)  
Senior Counsel  
Department of Business Oversight  
320 West 4<sup>th</sup> Street, Ste. 750  
Los Angeles, California 90013-2344  
Telephone: (213) 576-7604  
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
THE COMMISSIONER OF BUSINESS	)	CRMLA LICENSE NO.: 413-1076
OVERSIGHT,	)	CFLA LICENSE NO.: 603-8205
	)	
Complainant,	)	ACCUSATION
	)	
v.	)	
	)	
TOTAL MORTGAGE SERVICES, LLC,	)	
	)	
Respondent.	)	
	)	
	)	

The Complainant, the Commissioner of Business Oversight (Commissioner), is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

**I**

**Introduction**

1. Total Mortgage Services, LLC (Total) is a residential mortgage lender licensed by the Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code Section §50000 et seq.). Total has its principal place of business located at 185 Plains Road, 3<sup>rd</sup> Floor, Milford, Connecticut 06461. Total has five branch locations under its CRMLA license in California and elsewhere. Total employs mortgage loan originators in its CRMLA business.

ACCUSATION



**III****Per Diem Interest Overcharges**

6. The 2017 regulatory examination further disclosed that in 3 of 16 funded loans reviewed, or approximately 18.75%, Total was charging the borrower per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of California Financial Code section 50204, subdivision (o). A California Additional Per Diem Interest Charge Disclosure was found in the 3 loans with per diem interest overcharges. The disclosures were not prepared in accordance with California Civil Code section 2948.5, subdivision (b) or were not applicable, and therefore were not considered in calculating per diem interest charges. The per diem interest overcharges averaged \$164.35 per loan. The range of per diem interest overcharges was between \$109.32 and \$254.28. The range of days that interest was overcharged was between 1 and 5 days.

7. The Commissioner had found that Total was overcharging per diem interest during the last regulatory examination under the CRMLA that commenced in February 2011. Based upon the findings of the 2011 regulatory examination, the Commissioner instructed Total to implement such procedures as necessary to ensure that per diem interest was not overcharged in the future.

**IV****Improper Fair Lending Notices**

8. A review of Fair Lending Notices during the 2017 regulatory examination revealed that Total had violated Financial Code section 50204, subdivision (i), Health and Safety Code section 35830 and California Code of Regulations, title 21, section 7114 in 8 of the 24 loans reviewed by providing Fair Lending Notices to borrowers which failed to refer the borrowers to the proper agency for filing complaints.

**V****Finance Lender/Broker Licenses**

9. The violations of the CRMLA described above, if committed by Total on or before having originally sought a license from the Commissioner under the CFLL, would have constituted grounds for the Commissioner to deny the license application of Total under Financial Code section 22109. Pursuant to Financial Code section 22714, the Commissioner may suspend any license if “a

1 fact or condition exists that, if it had existed at the time of the original application for the license,  
2 reasonably would have warranted the commissioner in refusing to issue the license originally.”  
3 Pursuant to Financial Code section 22109, the Commissioner may refuse to issue a license if the  
4 “applicant . . . has violated any provision of this division or the rules thereunder or any similar  
5 regulatory scheme of the State of California . . .” Thus, a fact or condition now exists that, if it had  
6 existed at the time of the original application of Total for a license under the CFLL, reasonably  
7 would have warranted the Commissioner in refusing to issue the license.

## 8 VI

### 9 CRMLA Suspension/Penalty Statutes

10 10. Financial Code section 50327 provides in pertinent part:

11 (a) The commissioner may, after notice and a reasonable opportunity to  
12 be heard, suspend or revoke any license, if the commissioner finds that:

13 (1) the licensee has violated any provision of this division or rule or order  
14 of the commissioner thereunder; or (2) any fact or condition exists that, if  
15 it had existed at the time of the original application for license, reasonably  
16 would have warranted the commissioner in refusing to issue the license originally.

17 11. Financial Code section 50513 provides in pertinent part:

18 (a) The commissioner may do one or more of the following:

19 (4) Impose fines on a mortgage loan originator or any residential mortgage  
20 lender or servicer licensee employing a mortgage loan originator pursuant  
21 to subdivisions (b), (c), and (d).

22 (b) The commissioner may impose a civil penalty on a mortgage loan originator  
23 or any residential mortgage lender or servicer licensee employing a mortgage  
24 loan originator, if the commissioner finds, on the record after notice and  
25 opportunity for hearing, that the mortgage loan originator or any residential  
26 mortgage lender or servicer licensee employing a mortgage loan originator  
27 has violated or failed to comply with any requirement of this division or any  
28 regulation prescribed by the commissioner under this division or order issued  
under authority of this division.

(c) The maximum amount of penalty for each act or omission described in  
subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or  
order of the commissioner is a separate and distinct violation or  
failure.

**VII****Conclusion**

12. The Commissioner finds that, by reason of the foregoing, Total has violated Financial Code sections 50204, subdivisions (i) and (o), and 50314, Health and Safety Code section 35380, California Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6, and California Code of Regulations, title 21, section 7114, and a fact or condition now exists, that if it had existed at the time of original licensure under the CFLL, reasonably would have warranted the Commissioner in refusing to issue the CFLL license, and based thereon, grounds exist to (i) suspend the residential mortgage lender licenses and the finance lender and broker license of Total, and (ii) assess penalties against Total pursuant to Financial Code section 50513, subdivision (b).

**VII****Prayer**

WHEREFORE, IT IS PRAYED that:

1. Pursuant to Financial Code section 50327, the residential mortgage lender licenses of Total Mortgage Services, LLC be suspended for a period of up to 12 months;

2. Pursuant to Financial Code section 22714, the finance lender and broker license of Total Mortgage Services, LLC be suspended for a period of up to 12 months;

3. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against Total Mortgage Services, LLC for failure to properly reconcile its trust accounts on a monthly basis, in violation of Financial Code section 50314 and California Code of Regulations, title 10, section 1950.314.1 according to proof, but in an amount of at least \$15,000.00;

4. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against Total Mortgage Services, LLC for causing debit balances (shortages) to exist in its trust accounts and/or individual loan accounts in violation of California Code of Regulations, title 10, section 1950.314.6 according to proof, but in an amount of at least \$25,000.00;

5. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against Total Mortgage Services, LLC for at least three violations of Financial Code sections 50504,

subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation; and

6. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against Total Mortgage Services, LLC for at least 8 violations of Financial Code section 50204, subdivision (i) and Health and Safety Code section 35830 and California Code of Regulations, title 21, section 7114, for failing to refer borrowers to the proper agency, according to proof, but in an amount of at least \$250.00 per violation.

Dated: October 4, 2017  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Judy L. Hartley  
Senior Counsel  
Enforcement Division